IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1246 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
SHRI. BALRAJBHAI VATUMAL RAJPAL & 2 - Opponent(s)

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Appearance :
MR IM PANDYA Ld. APP for Appellant(s) : 1,
MR GAURANG H BHATT for Opponent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 11/12/2007

ORAL JUDGMENT

1. The appellant-State has filed this appeal under sec. 378(1)(3) of CrPC against the judgment and order of acquittal passed by the Court of Learned Chief Judicial Magistrate, Surendranagar in Criminal Case

No. 1964 of 1994 dated 19.8.1999 acquitting the respondents. The offence was registered under sec. 2(1-A)(A)(C) & (D)(M), 7(1) punishable under sec. 16 of the Prevention of Food Adulteration Act.

2. It is the case of the prosecution that the original complainant Food Inspector, appointed as per the Gazette, was serving at Surendranagar. On 2.11.1993 at 13.15 hrs., the complainant has visited the hotel of respondent Mr. Balrajbhai Vatumal Rajpal with one helper Mr. Vaghela. At that time, respondent no. 2 was also present. Both the respondents were informed by the complainant that they came there just to verify the curd. Thereafter, they inspected the hotel and in one big fridge, there was one vessel in which curd was kept weighing about 4kg and, as per Form No. 6 they have obtained the signatures and purchased 600grams of curd for which an amount of Rs. 10/- was paid to the respondents. Thereafter, 600 grams of curd was packed in three different bottles. The bottles were clean and spoon was used and all the samples were sealed and 20 drops of preservative formalin were also added. Thereafter, on the said samples, label was affixed and thereafter seal was applied. On 3.11.1993, with memorandum Form no. 7 sample was sent to the Laboratory at Bhuj, for analysis by S.T. Parcel and FIR's mark seal impression was also sent to the Public Analyst in different cover by Registered AD post along with forwarding letter and receipt was also obtained on 3.11.1993. At the time of trial, evidence was led

before the trial court. The documents were produced and oral evidence of the witnesses were also recorded by the trial court and after considering the oral as well as documentary evidence, the learned Magistrate has passed the order of acquittal which is impugned in this appeal.

3. I have heard learned APP Mr. IM Pandya for the appellant-State. He has argued that the prosecution has produced sufficient oral as well as documentary evidence. The order of the learned Magistrate is not proper, legal and it is erroneous. He has also argued that the learned Magistrate has not considered the evidence of the witnesses. He has argued that Food Inspector has followed the rules prescribed by law and he has also followed the procedure of taking sample and the contents of Form No. 6 etc. are just and proper. The curd was seized and sealed properly. The spoon was used as per rules and yet the learned Magistrate has not considered the evidence of prosecution. Therefore, the order impugned in this appeal passed by the learned Magistrate requires to be quashed and set aside.

4. On the other hand, Mr. Gaurang Bhatt learned advocate for the respondents has read Rule-14 and submitted that the spoon which was used by Food Inspector is in contravention of the provisions of Rules framed under the Act. He has relied upon the judgment of this Court reported in **1995(2) GLR p. 1099** and **2003(2)GLR p. 1620.** He has argued that

prosecution has failed to establish that mandatory rules and provisions of law were followed by the Food Inspector. He has read the judgments of this Court referred to above and submitted that in light of the observations made in these, the prosecution has failed to establish its case prima-facie. So, the order of acquittal passed by the learned Magistrate is proper, legal and no interference is called for by this Court.

5. I have gone through the entire evidence of prosecution and have also gone through the judgment of the trial court and read the provisions of Rule 14 of the PFA Act. Rule -14 of PFA Act is mandatory and it is the duty of the prosecution to prove the case by leading positive evidence that the bottles were clean and dry before the sample was taken by the Food Inspector and it is the duty of the prosecution to prove beyond reasonable doubt that all the ingredients of the provisions are proved and established as per law and especially the provisions which are mandatory in nature. From the evidence, it is clear that the prosecution has not followed the rules properly. The judgments reported in 2003(2) GLR p. 1620 and 1995(2) GLR p. 1099 (supra) cited before this Court by the learned advocate appearing for the respondents squarely applies to the facts of this case. From the judgment of the trial court, it is established that the learned Magistrate has dealt with each and every aspects of law and he has properly established the said issue in favour of the

respondents. In my view, there is a breach of mandatory provisions of Act and Rules framed thereunder and therefore, the learned Magistrate has rightly acquitted the respondents - accused.

6. It is settled legal position that in acquittal appeal, the Appellate Court is not required to re-write the judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial court while acquitting the respondents – accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court at this state. Hence, this appeal requires to be dismissed.

7. In the result, the Appeal is hereby dismissed. The impugned judgment and order dated 19.8.1999 passed by the learned Chief Judicial Magistrate, Surendranagar in Criminal Case No. 1964 of 1994, acquitting the respondents – accused, is hereby confirmed.

(Z.K. SAIYED, J.)

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